

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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CHRISTOPHER ACKLEY and  
MELISSA ACKLEY

Plaintiffs

vs.

**COMPLAINT**  
14-CV-

UNITED STATES OF AMERICA

Defendants

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PLAINTIFFS, CHRISTOPHER ACKLEY and MELISSA ACKLEY, by their attorneys, BROWN CHIARI LLP, for their Complaint against the Defendant, UNITED STATES OF AMERICA, in the above-entitled action, state as follows:

1. Plaintiff, CHRISTOPHER ACKLEY, is a natural person, and a resident of the Western District of New York.
2. Plaintiff, MELISSA ACKLEY, is a natural person, and a resident of the Western District of New York.
3. This Court has jurisdiction arising from, and this action is brought pursuant to, the Federal Tort Claims Act, 28 U.S.C. §1346(b) and §§2671-2680.
4. Venue is proper in the Western District of New York, Buffalo Division, pursuant to 28 U.S.C. §1391(b)(2), because the causes of action accrued therein.
5. Upon information and belief, at all times relevant hereto, the Seneca Nation of Indians ("Seneca Nation") operated a healthcare facility known as the Cattaraugus Indian

Reservation Health Center (“Health Center”), located in Irving, New York, and included among the services offered at said healthcare facility was a dental clinic.

6. Between 2003 and 2006, Plaintiff, CHRISTOPHER ACKLEY, sought dental treatment at the aforesaid Health Center, and upon information and belief, said dental treatment was provided by and/or under the direction of Rocco J. Oddo, D.D.S. (“Oddo”) and/or David C. Millhouse, D.D.S. (“Millhouse”).

7. Upon information and belief, Oddo and Millhouse were employed at all relevant times by the Seneca Nation.

8. Upon information and belief, the Seneca Nation entered into a Self-Determination Contract through/with the United States Department of Health and Human Services which was in effect at all relevant times, and as such, Oddo, Millhouse and the other persons who provided dental services to Plaintiff, CHRISTOPHER ACKLEY, at the aforesaid Health Center are deemed to have been employees of the United States Public Health Service within the exclusive remedy provision of 42 U.S.C. §233(a), which makes exclusive the remedy against the United States, as provided by 28 U.S.C. §1346(b) and §2672, “for damages for personal injury... resulting from performance of ... dental functions...by any ... employee...of the Public Health Service while acting within the scope of his office or employment.”

9. Upon information and belief, all persons who provided, or assisted in the provision of, dental services to Plaintiff, CHRISTOPHER ACKLEY, at the aforesaid Health Center were acting within the scope of their office or employment with the United States Health

Service, as aforesaid, at all times when such persons participated in the dental care and treatment provided to the Plaintiff, CHRISTOPHER ACKLEY.

10. Upon information and belief, the dental care and treatment provided to Plaintiff, CHRISTOPHER ACKLEY, at the aforesaid Health Center was negligently performed.

11. On or about November 7, 2008, a completed SF-95 claim form was sent by First Class Mail to the Office of the General Counsel, General Law Division, Claims Office, Department of Health and Human Services, and the receipt of said completed SF-95 claim form was acknowledged by letter from the aforesaid Office of the General Counsel, dated November 17, 2008.

12. Subsequent to said acknowledgement, Plaintiffs properly and timely complied with all requests from the aforesaid Office of General Counsel for the submission of “substantiating evidence”, with the response to the last such request having been completed by letter dated June 2, 2009 and addressed to the aforesaid Office of the General Counsel.

13. More than six months have elapsed since Plaintiffs timely notified the Department of Health and Human Services, Office of the General Counsel, of the defendants’ negligence and responded timely and completely to all requests from said Office of General Counsel for “substantiating evidence” relative to said negligence, and to date, Plaintiffs have received no notification of any determination having been made with respect to their claims.

**AS AND FOR PLAINTIFFS’ FIRST CAUSE OF ACTION**

14. Plaintiffs repeat and reallege paragraphs 1 through 13 herein.

15. The Defendant, UNITED STATES OF AMERICA, acting by and through the Health Center, and its agents, servants, and/or employees, was negligent in the care and treatment provided to the Plaintiff, CHRISTOPHER ACKLEY.

16. Defendant's negligence caused the Plaintiff, CHRISTOPHER ACKLEY, to endure extensive and severe pain and suffering, disability, disfigurement, and loss of enjoyment of life.

**AS AND FOR A SECOND CAUSE OF ACTION, PLAINTIFFS STATE:**

17. Plaintiffs repeat and reallege paragraphs 1 through 16.

18. At all relevant times, Plaintiff, MELISSA ACKLEY, has been the lawful married wife of Plaintiff, CHRISTOPHER ACKLEY.

19. As a result of the Defendant's negligence, as aforesaid, Plaintiff, CHRISTOPHER ACKLEY, has been seriously and permanently injured.

20. As a result of the injuries suffered by Plaintiff, CHRISTOPHER ACKLEY, Plaintiff, MELISSA ACKLEY, has suffered and will continue to suffer a loss of support and services, a loss of consortium, and a loss of companionship.

21. This Court has original subject matter jurisdiction over claims arising from the laws of the United States and pursuant to the Federal Tort Claims Act, 28 U.S.C. §§1346(b)(1), 2671-2680 and 28 U.S.C. §1331.

**WHEREFORE**, Plaintiffs, CHRISTOPHER ACKLEY and MELISSA ACKLEY, do hereby demand judgment against Defendant, UNITED STATES OF AMERICA, in the amount of Two Million Dollars (\$2,000,000.00) on behalf of Plaintiff, CHRISTOPHER ACKLEY, and

Five Hundred Thousand Dollars (\$500,000.00) on behalf of Plaintiff, MELISSA ACKLEY,  
together with the costs and disbursements of this action.

DATED: Lancaster, New York  
March 25, 2014



James M. Mucklewee, Esq. for  
BROWN CHIARI LLP

**Attorneys for Plaintiffs**

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